

**PURCHASE MONEY SECURITY DECLARATION AND
INSTRUCTIONS TO SECURITY DEPOSITORY — §11013.2 and/or .4**

RE 600H (New 1/97x)

SUBDIVIDER

NAME OF SUBDIVIDER

ADDRESS, CITY, STATE, ZIP CODE

DEPOSITORY

NAME OF DEPOSITORY

Department of Real Estate

ADDRESS, CITY, STATE, ZIP CODE

107 South Broadway, Room 7111, Los Angeles, CA 90012

PART ONE — PURCHASE MONEY SECURITY DECLARATION

1. This Declaration is made this _____ day of _____, _____, by the Subdivider identified above.

2. Recitals.

A. Subdivider is engaged in the sale or lease or offering for sale or lease of lots, units or parcels in the subdivisions described in Exhibit "A" attached hereto and made a part hereof, and such additional subdivisions as the Subdivider may hereafter designate in amendments to Exhibit "A" ("the subdivisions"). In the course of the sale or lease of lots, units or parcels in the subdivisions, Subdivider must comply with the provisions of Section 11013.2 or 11013.4 of the California Business and Professions Code ("the Code"); and

B. Subdivider has elected to comply with the provisions of Sections 11013.2 and 11013.4 of the Code by establishing the Security described below for the benefit and protection of each and every purchaser or lessee of any lot or lots within the subdivisions ("the purchaser").

3. **Secured Obligation.** In the course of every purchase or lease, which is subject to the provisions of Sections 11013.2 or 11013.4 of the Code, of a lot or lots in any of the subdivisions, Subdivider shall take one of the following actions:

A. Subdivider shall forthwith deposit the entire sum of money paid or advanced by the purchaser into an escrow depository theretofore accepted by the Commissioner, which escrow has agreed to hold and disburse said monies in compliance with Section 11013.2(a) or Section 11013.4(a) of the Code, as applicable; or

B. Subdivider shall deliver the legal title or other interest contracted for, whether it be title of record or other interest, to the purchaser within the time specified in the contract to sell or lease or any extension thereof and obtain a proper release from any blanket encumbrance, as defined by Section 11013 of the Code, affecting said purchaser's lot or lots; or

C. If said monies have not been deposited in escrow as provided in (A) above or said legal title or other interest contracted for has not been delivered as provided in (B) above, Subdivider shall forthwith return the monies so paid or advanced.

4. **Security.** To secure the performance of the obligation described in Part One, Paragraph 3, above, the Subdivider has procured the issuance of the:

☐ surety bond in the sum of _____ Dollars (\$_____), to the State of California, as obligee,

☐ letter of credit in the sum of _____ Dollars (\$_____), to the Depository identified above ("Depository"), for the benefit of each and every purchaser,

☐ set-aside letter in the sum of _____ Dollars (\$_____), to the Depository for the benefit of each and every purchaser,

a copy of which instrument is attached to this Declaration as an Exhibit, or a cash deposit in the sum of _____ Dollars (\$_____), for the benefit of each and every purchaser. The term "Security" as used in this Declaration refers to the cash deposit, surety bond, letter of credit, or set-aside letter identified

above, together with any funds drawn thereunder held by the Depository.

5. **Set-Aside Letter.** If the Security is a set-aside letter, funds in the sum specified above (“Funds”) will be retained in a separate account controlled and administered by the Issuer until full and final performance by Subdivider of Subdivider’s obligations under Part One, Paragraph 3 of this Declaration, or until disbursed in accordance with the terms of the set-aside letter. The Subdivider hereby grants each and every purchaser a security interest in the Funds to secure the performance of the obligation described in Part One, Paragraph 3, above.
6. **Enforcement and Release of the Security.** If the Subdivider fails to perform the Subdivider’s obligation under Part One, Paragraph 3 of this Declaration, each and every purchaser damaged by such failure shall have the right, whether through enforcement of the Security, demand upon funds drawn thereunder held by the Depository, or otherwise, to receive such sums as may be required to satisfy the obligation of the Subdivider to such purchaser under Part One, Paragraph 3 of this Declaration, and the Subdivider shall, without regard to any other disputes or negotiations then existing, immediately take any and all actions and execute any and all documents as may be required to cause such sums to be paid to such purchaser. Any amount received by such purchaser directly from the Subdivider or from proceeds of the Security shall be credited against any claim by such purchaser arising out of the Subdivider’s failure to perform the Subdivider’s obligations under this Declaration.
7. **Provisions for Arbitration of Conflicts.** In the event there is a dispute between the Subdivider and any purchaser with respect to this Declaration or the enforcement, exoneration, or release of the Security, the issue or issues shall, at the request of either Subdivider or the purchaser, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association before an arbitrator selected from the panels of the arbitrators of said Association. In the event of referral to arbitration, Subdivider will remit the fee to initiate the arbitration, however the costs of arbitration shall ultimately be borne as determined by the arbitrator. The Subdivider and the purchaser shall abide by the determination of the arbitrator with respect to the enforcement, exoneration or release of the Security and with respect to payment of the costs of arbitration.
8. **Attorney’s Fees.** In any action or proceeding arising out of this Declaration, the prevailing party or parties shall be entitled to reasonable attorney’s fees.
9. **Assignment.** Subdivider may assign its rights under this Declaration to the Issuer of the Security. Such assignment does not make the assignee liable for any of Subdivider’s obligations pursuant to this Declaration, unless such obligations have been specifically assumed by the assignee in writing.
10. **Binding Upon Successors.** This Declaration and the rights and duties of parties in interest thereof shall be binding upon and shall inure to the benefit of the successors in interest, and assigns of the respective parties.
11. **Laws of California.** This Declaration shall be construed and governed by the laws of the State of California.

PART TWO — INSTRUCTIONS TO DEPOSITORY

This constitutes instructions by the Subdivider to the Depository, which instructions are irrevocable except as modified by the addition of subdivisions by amendments to Exhibit “A”.

Depository hereby acknowledges receipt of the cash deposit, surety bond, letter of credit, or set-aside letter described in Part One, Paragraph 4 of the foregoing Declaration. The term “Security” as used in these instructions refers to the cash deposit, surety bond, letter of credit, or set-aside letter, together with any funds drawn thereunder held by the Depository pursuant to these instructions. The term “Claimant” as used in these instructions refers to each and every person who has filed a verified written claim with the Depository stating that the Subdivider has failed to perform the Subdivider’s obligations under Part One, Paragraph 3, above.

Nothing contained in these instructions imposes any duty on the Depository to audit in any way the Subdivider’s discharge of its duties or obligations thereunder, or to verify the truth of the statements made in any notices given to the Depository by the Subdivider. Except as otherwise provided by law, the duties of the Depository are to receive, hold, release, or draw upon the Security in accordance with the following instructions.

1. Return Of The Security To The Subdivider.

- A. If the Depository receives a written demand from the Subdivider for the return of the Security, which demand is

accompanied by the Subdivider's certificate, signed under penalty of perjury, confirming that the Subdivider has fully and finally performed all Subdivider's obligations under Part One, Paragraph 3, above, and that four (4) years have elapsed since the last sale or lease or offer to sell or lease any lot or lots in the subdivision by the Subdivider, then, within fifteen (15) calendar days of receipt of the demand and certificate, the Depository shall deliver a copy of the demand and certificate to each and every Claimant together with a statement notifying the Claimant that the Claimant's written objection to return of the Security to the Subdivider must be received by the Depository within forty (40) days after delivery of the demand and certificate to the Claimant.

- B. If within forty (40) calendar days after such delivery, any Claimant delivers to the Depository the Claimant's written objection to the return of the Security to the Subdivider, then the Depository shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Depository delivers the demand and certificate to the Claimant, no Claimant delivers to the Depository a written objection to the return of the Security to the Subdivider, then the Depository shall promptly deliver the Security to the Subdivider.

2. Remittance Of The Security To The Claimants.

- A. If the Depository receives a demand from one or more Claimants for the remittance of the Security, or some specified portion thereof, which demand is accompanied by the Claimant's certificate, signed under penalty of perjury, confirming that the Subdivider has failed to perform the Subdivider's obligations under the Part One, Paragraph 3, above, then, within fifteen (15) calendar days of receipt of the demand and certificate, the Depository shall deliver a copy of the demand and the certificate to the Subdivider, together with a statement notifying the Subdivider that the Subdivider's written objection to remittance of the Security to the Claimant or Claimants must be received by the Depository within forty (40) days after delivery of the demand and certificate to the Subdivider.
- B. If within forty (40) calendar days after such delivery, the Subdivider delivers to the Depository the Subdivider's written objection to the remittance of the Security to the Claimant, then the Depository shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Depository delivers the demand and certificate to the Subdivider, the Subdivider does not deliver to the Depository the Subdivider's written objection to the remittance of the Security to the Claimant, then:
- 1) If the Security is a surety bond, the Depository shall promptly deliver a copy of the Security to the Claimant;
 - 2) If the Security is a letter of credit, the Depository shall promptly present the Security for payment of that portion of the Security specified in Claimant's demand by presenting the Security and a sight draft drawn under and in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment promptly remit to the Claimant that portion of the Security specified in the Claimant's demand;
 - 3) If the Security is a set-aside letter, the Depository shall promptly make demand in compliance with the set-aside letter to the issuer of the set-aside letter for payment of that portion of the Security specified in the Claimant's demand, and upon receipt of payment promptly remit to the Claimant that portion of the Security specified in the Claimant's demand;
 - 4) If the Security is or has become a cash deposit, the Depository shall promptly remit to the Claimant that portion of the Security specified in the Claimant's demand.

3. Conflicting or Nonconforming Instructions.

In any of the circumstances described in subparagraphs A through E, below, the Depository shall, at its sole discretion, either (1) interplead the Security, (2) retain the Security until the Security is returned to the Subdivider or remitted to the Claimant in accordance with these instructions, or (3) retain the Security until the Security is disposed of in accordance with the order of a court of competent jurisdiction:

- A. A Claimant timely objects in writing to a demand by the Subdivider for the return of the Security;
- B. The Subdivider's demand for the return of the Security is not accompanied by the certificate described in Part Two, Paragraph 1-A, above;
- C. The Subdivider timely objects in writing to a demand by a Claimant for remittance of all or any portion of the Security;
- D. The Claimant's demand for remittance of the Security is not accompanied by the certificate described in Part Two, Paragraph 2-A, above; or

E. The Depository receives conflicting instructions or claims.

4. Pending Return Or Remittance Of The Security.

- A. If the Security is a letter of credit, and if the issuer of the letter of credit has not extended the time for drawing upon the letter of credit by extending or reissuing the letter of credit and depositing the extension or reissued letter of credit with the Depository, then fifteen (15) calendar days prior to the expiration of the time for drawing upon the letter of credit, the Depository shall present the Security for payment in full by presenting the Security and a sight draft drawn under and in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment handle the proceeds of the Security as a cash deposit. The Depository shall notify the Subdivider upon receipt of proceeds of a draw on the letter of credit.
- B. If the Security is or has become a cash deposit, a surety bond or a set aside letter, the Depository shall retain the Security until the Security is disposed of in accordance with these instructions or the order of a court of competent jurisdiction.

5. Notices.

Delivery of all notices and other documents described in these Instructions or in the foregoing Declaration shall be made by overnight or same-day commercial delivery service or by United States mail, certified or registered, postage prepaid. All such notices and documents shall be deemed delivered, given and received: (a) the day of sending via same-day commercial delivery service; (b) the following business day after sending via overnight commercial delivery service; or (c) three (3) calendar days after deposit in the United States mail. All such notices shall be addressed as set forth on page 1 of this Declaration and Instructions; provided that the Subdivider and the Depository and any claimant may at any time change their respective address for notices and other documents described herein by sending to the other parties a written notice specifying the new address.

Dated: _____

Subdivider

By

Receipt of the foregoing and the security is hereby acknowledged.

Dated: _____

Depository

By